SUPREME COURT OF THE UNITED STATES.

Nos. 130, 217 and 404.—October Term, 1918.

Postal Telegraph-Cable Company, Plaintiff in Error, 130 *vs.* Tonopah and Tide Water Railroad Company.	In Error to the Supreme Court, Appellate Division, First Department of the State of New York.
The Western Union Telegraph Company, Appellant, 217 *vs.* The Baltimore and Ohio Railroad Company.	Appeal from the United States Circuit Court of Appeals for the Second Circuit.
Postal Telegraph-Cable Company, Appellant, 404 *vs.* Chicago Great Western Railroad.	Appeal from the United States Circuit Court of Appeals for the Seventh Circuit.

[January 20, 1919.]

Mr. Justice Holmes delivered the opinion of the Court.

The first of these cases, *Postal Telegraph-Cable Company* v. *Tonopah and Tide Water Railroad Company*, was a suit in the Municipal Court of the City of New York for services rendered to the Railroad Company. The defendant set up that the services consisted of the sending of telegrams relating to the defendant's business and were covered by a contract such as usually is made between railroads and telegraphs, under which such telegrams were to be sent free of specific charge. The question raised was the validity of the agreement. The Court decided that it was valid and judgment for the defendant was affirmed on appeal. The next case in number, *The Western Union Telegraph Company* v. *The Baltimore and Ohio Railroad Company* was brought by the Railroad Company in the District Court of the United States for the Southern District of New York and sets up a similar contract, which the Telegraph Company now refuses to perform in conse-

quence of a ruling of the Interstate Commerce Commission. It prays a declaration of the validity of the contract and specific performance. The plaintiff obtained a decree in the District Court, 241 Fed. Rep. 162, which was affirmed by the Circuit Court of Appeals, 242 Fed. Rep. 914. The last of the three cases, *Postal Telegraph-Cable Company* v. *Chicago Great Western Railroad*, was another bill in equity, brought by the Railroad Company in the District Court of the United States for the Northern District of Illinois upon a similar contract, to prevent a multiplicity of suits by the Telegraph Company like that first above mentioned, to have the validity of the contract declared, and to obtain a decree that it be performed. The defendant prevailed in the District Court, 249 Fed. Rep. 664, but the decision was reversed by the Circuit Court of Appeals, and there the plaintiff obtained a decree. 249 Fed. Rep. 664. The only question upon which our decision is sought is the validity of the agreements, which are so far alike as to present a single issue here.

The contracts elaborately provide for the reciprocal rights of the companies, for a division of expenses between the railroad and telegraph, for the use by the telegraph of the railroad's right of way for its poles, for monthly payment of a certain sum by the telegraph, and then agree, this being the point now material, that up to a certain amount calculated at the regular day rates of the telegraph, it should deliver free of charge messages pertaining to the railroad business to any points on its system on or beyond the railroad lines, and that up to an amount calculated in similar manner the railroad should transport the materials, supplies and employees of the telegraph, needed for the construction, maintenance or renewal of the telegraph lines whether on or off the lines of the road. The latest ruling of the Interstate Commerce Commission is that these contracts for an exchange of service while valid for services on the line are invalid as to services off the line, which last, it is held, must be charged for by the railroad upon the basis of its published rates and by the telegraph upon that of its charges reasonably charged to other customers for similar services. The Commission construes in this way a proviso added to § 1 of the act to regulate commerce by an amendment of June 18, 1910, c. 309, § 7. This amendment brought telegraph, telephone and cable companies within the act but also inserted a proviso "that nothing in this Act shall be construed to

prevent telephone, telegraph, and cable companies from entering into contracts, with common carriers, for the exchange of services.'' The question more specifically stated is whether the construction adopted by the Commission is right.

We do not see how that construction can be got from the words of the act. The words are general and as certainly allow services off the line as services on it to be exchanged. In fact they do so almost in terms by allowing common carriers to exchange with cable companies. This being obvious, it is said that while the abstinence of the act from preventing exchanges covers the whole ground, the exchange of services off the line must be on the terms that we have stated, which makes the act as to them merely a superfluous permission to settle accounts periodically instead of paying for each transaction in cash. But 'exchange' is barter and carries with it no implication of reduction to money as a common denominator. It contemplates simply an estimate, determined by self interest, of the relative value and importance of the services rendered and those received. This is admitted with regard to services on the line, and if so whatever services can be exchanged can be exchanged in the same way. We cannot follow the argument from *Santa Fe, Prescott and Phoenix Ry. Co.* v. *Grant Brothers Construction Co.*, 228 U. S. 177, that the exchange properly so called should be confined to cases where the common carrier is not acting as such. That seems to us a perverse conclusion from a proviso permitting 'common carriers' to exchange.

Nothing is gained by referring to the provisions in other sections or to those of the section to which the proviso is attached, for the provision is that nothing in the act, in whatever section it may occur, shall be twisted into preventing the exchange. The passion for equality sometimes leads to hollow formulas and the attempt to bring these arrangements under the head of undue preferences and the like hardly seems a natural result of the statute. No one knows which of the two would be found to be preferred as having the best of a very complex bargain. All the great benefits derived on one side are the consideration for all those conferred upon the other. The railroad and the telegraph have grown together in mutual dependence and we are told that contracts of this sort for long terms have been nearly universal for fifty years. The contracts had been called to the attention of Congress repeatedly by the Commission, which, in December, 1906, stated that, so

far as it could see, the full performance of them by the carriers would not affect any public or private interest adversely. It held however that under the law as it then stood contracts for services off the line were unlawful. 12 I. C. C. 10, 12. Then the Amendment of 1910 was passed, and passed, we must suppose, having the opinion of the Commission and the notorious long-standing form of existing contracts in view. The contracts are complex, as we have said, and entire. We cannot believe that an act which purported to allow them meant to break them up. The Commission seems not to have believed it in its first ruling upon the amended act.

Our opinion is confirmed by a consideration of the further additions to § 1, in 1910, allowing free passes to be given to the employees of telegraph, telephone and cable lines, and by some further matters of detail referred to in the judgments of the Courts below of which we have cited the reports. The interdependence of the companies is very intimate, and the trouble that would be caused by a narrow construction of the act we believe would be great, with no advantage so far as we can see to any other users of the lines or roads. We do not go into more minute discussion because the result reached must stand on the plain words of the act, the meaning of which is confirmed rather than made doubtful by the circumstances in which the proviso was enacted and the events that had gone before.

Judgment and decrees affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

SUPREME COURT OF THE UNITED STATES.

Nos. 176 and 248.—October Term, 1918.

176	Louisville & Nashville Railroad Company, Appellant, *vs.* Western Union Telegraph Co.	Appeal from the United States Circuit Court of Appeals for the Fifth Circuit.
248	Same *vs.* Same.	In Error to the Supreme Court of the State of Mississippi.

[June 9, 1919.]

Mr. Justice Holmes delivered the opinion of the Court.

These suits, the earlier begun in the District Court of the United States, the later in a court of the State of Mississippi, are bills in equity containing the same allegations and seeking the same relief. They both seek a decree that State judgments of condemnation by eminent domain, giving to the telegraph company the right to erect its poles along the railroad's right of way across the State of Mississippi, are void. The State case was decided first and was in favor of the defendant in error. 107 Miss. 626. Then in the District Court the telegraph company pleaded the State decree as a conclusive adjudication and moved that the bill and a supplemental bill be dismissed. Against the supplemental bill it also set up an injunction in its favor granted by another Court of the United States, reported in 201 Fed. Rep. 946 and 207 Fed. Rep. 1. The bills were dismissed upon both grounds. 233 Fed. Rep. 82. 147 C. C. A. 152. The constitutional questions raised are presented equally in the State case and as we shall deal with them under that, 107 Miss. 626, it may be assumed, subject to those questions, that the other decision was right, as we see no reason to doubt.

The Mississippi proceedings in eminent domain are limited in their effect to determining the amount of damages to be paid. If the right to condemn is disputed that is left to be decided by a suit in equity. *Vinegar Bend Lumber Co.* v. *Oak Grove & Georgetown*

R. R. Co., 89 Miss. 84, 105-107, 110, 113. The railroad company resorted to such a bill in this case. So far as it alleged a failure to comply with the State laws the State decision is conclusive against it, and of course it cannot complain of not being given a hearing simply because it is referred for that hearing to a different suit from that in which the value of the property is fixed. The separation is familiar. *United States* v. *Jones*, 109 U. S. 513, 519. Passing these matters by, the first contravention of the Fourteenth Amendment alleged is that under the Mississippi laws the right could be taken only for a new line, whereas the bill avers that the Telegraph Company wanted the right not for a new line but for the purpose of maintaining an existing line that it had maintained theretofore under a contract with the railroad now brought to an end. To this the Supreme Court replied that, the judgments being right upon their face, if the telegraph company attempted to use them to maintain an existing line instead of a new one its rights could be determined when the attempt was made. The Fourteenth Amendment knows no difference between the two purposes, and the extent to which the telegraph company is confined to one of them under the State laws is for the State court to decide. No constitutional right is infringed when the State court postpones discussion until the attempt is made. The decree as well as the opinion saves the railroad's right in that event.

It is argued that the judgments are void because they do not fix the exact location of the telegraph poles within the specified right of way. But they allow only one line of poles to be set up, and require it to be erected "in such manner and at such distance from defendant's (the railroad's) track as in no way to interfere with the operation of trains of said defendants, or with any proper and legitimate use thereof by defendants, or the use by any telegraph or telephone company now existing thereon, and so as not to be dangerous to persons or property, and subject to all the stipulations and agreements in said petition contained." The petition contains an agreement that if, after the erection of the poles, &c. "it should become necessary for the said defendant to change the location of its tracks, or construct new tracks, or side tracks, where the same do not now exist, and for such purpose to use or occupy that portion of said right of way on which petitioner's poles are, or may be set, cross arms placed thereon and wires strung, your petitioner will, at its own expense upon reasonable notice

from said defendants, remove said poles, cross arms and wires to such other point, or points, on said defendant's right of way as shall be designated by said defendant." This agreement is binding. *Mobile & Ohio R. R. Co.* v. *Postal Telegraph Cable Co.*, 76 Miss. 731, 752, 753. The description has been held to satisfy the requirements of State law and it would be extravagant to say that the Fourteenth Amendment made it bad.

It is contended that the State had no power to condemn for the use of the telegraph company any part of the right of way of an interstate road or bridge over navigable waters. Support for the argument is sought in *Western Union Telegraph Co.* v. *Pennsylvania R. R. Co.*, 195 U. S. 540. That case shows, to be sure, that the Act of July 24, 1866, c. 230, 14 Stat. 221, R. S. § 5263, purporting to grant to any telegraph company the right to construct and maintain lines along the post roads of the United States and to cross navigable streams, did not of itself give the right to appropriate private property. But it equally shows that Congress gave its assent to the acquisition of such rights in post roads by any means otherwise proper, as against any objection that it was an interference with interstate commerce, and such is the implication of the cases. 'State sovereignty under the Constitution is not interfered with.' *Pensacola Telegraph Co.* v. *Western Union Telegraph Co.*, 96 U. S. 1, 12. *Western Union Telegraph Co.* v. *Richmond*, 224 U. S. 160, 169. *Louisville & Nashville R. R. Co.* v. *Western Union Telegraph Co.*, 207 Fed. Rep. 1, 11, 12. The present decision is enough to establish that the condemnation followed the State law. See also *Cumberland Telephone & Telegraph Co.* v. *Yazoo & Mississippi Valley R. R. Co.*, 90 Miss. 686. No act of Congress prevents the State proceedings having their intended effect.

We think it unnecessary to deal with the somewhat meticulous objections to the form in which the Mississippi decree was pleaded and proved in the District Court or to repeat the answer of the defendant in error to the contention that if proved it was not an adjudication. If the bill in the District Court had not been disposed of by the State decree it would be dismissed under our present decision. Two days before the answer setting up the State decree the railroad filed a supplemental bill alleging that the telegraph company had no longer any rights except under the condemnation proceedings but that it still was using its old line. The telegraph

company pleaded in reply an injunction, mentioned above, granted by another Court of the United States, forbidding the railroad to interrupt the telegraph in the use of its wires upon the railroad's right of way, the declared purpose being to preserve the *status quo* for a certain time, or until the condemnation could be carried out. 207 Fed. Rep. 1, 5. If for any reason the supplemental bill does not fall with the bill this earlier action in the Sixth Circuit (while it stands, see 252 Fed. Rep. 29,) properly was regarded as precluding contrary action in the Fifth.

Decrees affirmed.

A true copy.

Test:

Clerk Supreme Court, U. S.